IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

	)	2 CA-JV 2006-0070
	)	DEPARTMENT A
	)	
IN RE LEONARD B.	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16058803

Honorable Virginia Kelly, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Ellen R. Brown — Tucson
Attorneys for State

Robert J. Hooker, Pima County Public Defender
By Matthew A. Jasper — Tucson
Attorneys for Minor

H O W A R D, Presiding Judge.

¶1 Leonard B. appeals from the juvenile court's order adjudicating him delinquent for possessing a deadly weapon while prohibited from doing so in violation of A.R.S. § 13-3102(A)(4). He contends the juvenile court erred in denying his motion to suppress evidence of a weapon police found on his person after entering a hotel room where

he had been sleeping. He also asks us to disregard the state's answering brief because it was filed one day beyond the due date for filing, and the state neither sought nor obtained from this court an extension of time in which to file the brief. We agree the answering brief's untimeliness was not excused, but exercise our discretion not to strike it. We affirm.

¶2 The state claims that by admitting responsibility for the charges, Leonard waived his right to challenge the trial court's ruling on the motion to suppress the weapon. In the criminal context, A.R.S. § 13-4033(B) and Rule 17.1(e), Ariz. R. Crim. P., 16A A.R.S., provide that a defendant who pleads guilty waives his or her right to appeal. *See also State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993) ("entry of a plea waives all non-jurisdictional defects," including ineffective assistance of counsel, unless counsel was "ineffective in connection with matters directly relating to the entry of a guilty plea"). But the state has not cited any statute, rule, or other authority to support its argument that the same rule should apply in delinquency proceedings. *See* Ariz. R. Civ. App. P. 13(a)(6) and (b)(1), 17B A.R.S. (requiring argument in answering brief to "contain the contentions of the [party] with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on"); Ariz. R. P. Juv. Ct. 91(A), 17B A.R.S. (applying Rule 13, Ariz. R. Civ. App. P., to juvenile appeals). And A.R.S. § 8-235(A) provides that "[a]ny aggrieved party in any juvenile court proceeding . . . may appeal from a final order of the juvenile court to the court of appeals." *See also* Ariz. R. P. Juv. Ct. 88(a), 17B A.R.S. The state failed to object below when, immediately

before entering his admission, Leonard specifically preserved his right to challenge the juvenile court's suppression ruling. In the absence of any citation of authority by the state, we conclude that Leonard claims to be aggrieved by the trial court's suppression ruling and, therefore, is allowed to appeal from the final order adjudicating him delinquent. Accordingly, in the limited circumstances of this case, we reject the state's unsupported assertion and address Leonard's claim.

¶3 We find neither an abuse of discretion nor legal error in the trial court's denial of Leonard's motion to suppress. *See State v. Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d 787, 790 (App. 2007). Officer Daniel Bustamonte testified at the hearing on the motion to suppress that on the morning in question, he and other officers had been dispatched with information provided to the Tucson Police Department that a "violent offense" involving a weapon had occurred. According to this information, individuals who had "fled" from the scene with "at least one weapon amongst them" were "gang affiliated" and had gone to a hotel that was located within Bustamonte's area of patrol. Bustamonte and other officers planned to locate the vehicle that had fled the scene, "knock on the [hotel room] door and assess the situation at that point." After the officers knocked and announced their presence, a man opened the door and began speaking with one of the officers. Bustamonte could see behind the man into the room. Within a few seconds after the door opened, Bustamonte saw an approximately two-year-old child sleeping on a bed, a larger figure next to her, and two moving figures in the room, one taking "big steps toward the closet and sort of hiding behind

the closet" and the other moving quickly to the back of the room, where the bathroom was located. Bustamonte also "heard the click of the bathroom door." Those who had moved out of view did not respond to the officers' commands to come into view.

¶4 "[A]nticipating what would happen should the individual come out from the back with weapons while" the child was between the officers and those who had concealed themselves, Bustamonte assessed the situation as "extremely dangerous" and entered the room to "[p]rotect the child's welfare and our own safety." Also factored into his decision were the violent incident of which the officers had been informed, the alleged gang affiliation of the persons involved, the apparent efforts of two of the room's occupants to hide, their refusal to obey a clear command to show themselves, and the small size of the room. After entering, Bustamonte eventually awoke Leonard, who had been asleep on one of the beds, and patted him down.[1] That resulted in the discovery of the gun Leonard claims should have been suppressed.

¶5 Warrantless entries to a hotel room are unlawful absent consent or exigent circumstances. *State v. Davolt*, 207 Ariz. 191, ¶ 24, 84 P.3d 456, 467 (2004). Exigent circumstances include "an emergency, a 'hot' pursuit, the probability of the destruction of evidence, the possibility of violence, the knowledge that a suspect is fleeing or attempting to flee, or a substantial risk of harm to the persons involved or to the law-enforcement

[1]Although, before entering, Bustamonte had seen only the child and one other figure, in fact, there had been a third person, Leonard, sleeping on a bed.

process if officers must wait for a warrant." *State v. Soto*, 195 Ariz. 429, ¶ 8, 990 P.2d 23, 25 (App. 1999). Here, the trial court could find Bustamonte's entry was justified by the possibility of violence and a substantial risk of harm to other occupants of the room, particularly the child and Leonard himself, whose vulnerability was exacerbated by the fact that they were sleeping in a location that fell between the armed officers and the uncooperative and potentially armed individuals hiding in the back of the small, dark room. Under these circumstances, the officers' entry was reasonable, as was the subsequent pat-down search of Leonard for weapons. *See Terry v. Ohio*, 392 U.S. 1, 24, 88 S. Ct. 1868, 1881 (1968).

¶6 Relying on *State v. Decker*, 119 Ariz. 195, 580 P.2d 333 (1978), Leonard asserts the police needed, and lacked, "probable cause [to arrest someone] in conjunction with an exigent circumstance to enter" the room. In *Decker*, a police officer who had detected the odor of burned marijuana emanating from a hotel room had eventually "kicked in the door" after the room's occupant had ignored or rebuffed the officer's repeated knocks and announcements of his presence. *Id.* at 196-97, 580 P.2d at 334-35. *Decker* does, in fact, state that "[i]n order to enter without a warrant, there must not only be probable cause to arrest, but there must also be exigent circumstances to enter." *Id.* at 197, 580 P.2d at 335. However, the court there referred to circumstances in which the purpose of the entry itself was to make an arrest.

¶7 That is distinguishable from the circumstances present here. As Leonard points out, before approaching the room, the officers appear to have lacked "probable cause to arrest anyone." He contends they therefore "should have . . . monitored who came and went from the room while attempting to obtain a warrant." If, as Decker had done, the occupants had refused to open the door when the officers knocked and announced their presence, that might have been an appropriate course of action. But that is not what happened. Instead, an occupant freely opened the door, and the officers then were called upon to quickly respond to exigent circumstances that unfolded before them. It is apparent that, at that point, they had no time to obtain a warrant, and their purpose for entering was not to effect an arrest, but to protect themselves and others. *Decker* is therefore inapposite. As a result, Leonard's reliance on *State v. Rogers*, 186 Ariz. 508, 924 P.2d 1027 (1996), and *State v. Stricklin*, 191 Ariz. 245, 955 P.2d 1 (App. 1996), to establish that the police lacked probable cause to arrest anyone is also misplaced.

¶8 The same is true of *State v. Cañez*, 202 Ariz. 133, 42 P.3d 564 (2002), upon which Leonard relies to suggest the police unlawfully created the exigent circumstances that justified their entry here. As Leonard points out, in that case, "'[a]n arrest warrant could have been obtained and defendant apprehended at his home.'" *Id.* ¶ 56, *quoting State v. Ault*, 150 Ariz. 459, 463, 724 P.2d 545, 549 (1986). But, here, no probable cause to obtain an arrest warrant existed, at least not when the officers first approached the room, so a

warrant could not have been obtained. Officers do not create exigent circumstances merely by knocking on a door to investigate a reported crime.

¶9 Finding no error in the juvenile court's denial of Leonard's motion to suppress the weapon, we affirm Leonard's delinquency adjudication and disposition order.[2]

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

GARYE L. VÁSQUEZ, Judge

[2]We affirm the disposition order of the juvenile court but acknowledge any issue related to disposition is moot. Leonard reached his eighteenth birthday while this appeal was pending.